Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63
	)	
Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA	)	CC Docket No. 98-157

COMMENTS OF CORECOMM LIMITED

CoreComm Limited ("CoreComm") hereby responds to the Fifth Report and Order and Further Notice of Proposed Rulemaking (the "Notice") concerning the exchange access services provided by competitive local exchange carriers ("CLECs").[1] CoreComm firmly believes that no new regulation is needed in this area. To the contrary, adoption of a new regulatory regime for new entrants would be inappropriate, contrary to the objectives of the Telecommunications Act, and injurious to emerging competition.

CoreComm is a growing, publicly-traded communications company that provides integrated local and long distance voice services, Internet access, and high-speed data offerings to residential and business customers. CoreComm is exploiting the convergence of communications technologies to offer bundled packages of services designed to give consumers greater flexibility, choice, and value than the offerings of other telecommunications service

[1] Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking ("Notice"), CC Docket No. 96-262 at ¶ 33 (rel. Aug. 27, 1999).

providers. CoreComm believes its strategy of combining its own facilities with leased elements of the local and interexchange networks owned by other carriers will allow it to provide a wide range of advanced telecommunications services efficiently and expeditiously to markets throughout the United States, allowing it to become a leading facilities-based carrier.

As CoreComm makes this transition, and phases out its reliance on resale of the services offered by incumbent local exchange carriers ("ILECs"), it will require flexibility in its decisions regarding the structure and price of the access services it provides to interexchange carriers ("IXCs"). CoreComm expects that its decisions will be informed by its own growing experience with costs and market conditions (including the practices of other CLECs and ILECs and the needs of access customers) and believes the results will be just, reasonable, and not unjustly or unreasonably discriminatory. CoreComm does not believe that new regulations are needed or that the goals of competition and deregulation will be advanced by imposing a new layer of regulation and its attendant administrative burdens on new market entrants. CoreComm recommends that the Commission address this issue, as it does the matter of the prices and terms for interexchange services offered by nondominant carriers, not through rules of general applicability but through case-by-case remedies fashioned to address any demonstrated abuses.

I. THE COMMISSION SHOULD AVOID UNNECESSARY REGULATION OF CLEC ACCESS CHARGES.

A. The Telecommunications Act of 1996 Is Intended (Among Other Things) To Reduce Unnecessary Regulation in the Telecommunications Industry.

In the Telecommunications Act of 1996 ("1996 Act"), Congress intended "to provide for a procompetitive, de-regulatory national policy framework" designed to open the telecommunications market to competition.[2] Even as Congress granted the Commission new tools to break open long-closed monopoly markets and established new regulatory obligations

[2] H.R. Conf. Rep. No. 104-458 at 113 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 124.

for ILECs,[3] Congress specifically instructed the Commission to forbear from applying any regulation that is not necessary to ensure just and reasonable service, protect consumers, or otherwise to protect the public.[4] The Commission is specifically empowered to consider whether forbearance will "enhance competition among providers of telecommunications services."[5] In light of this legislative guidance, the Commission should refrain from imposing new regulations on new entrants that have, at least until now, been unregulated.

The Commission has wisely recognized that CLEC regulation should be avoided whenever possible and the "least intrusive means" should be used to constrain CLEC access charges.[6] The least intrusive approach to CLEC access charges is *not* to establish new rules of general application regarding the level and structure of CLEC access charges, but to remedy specific abuses if they occur. This approach will best promote the competitive and deregulatory goals of the 1996 Act.

B. Regulation of CLEC Access Charges Is Not Needed Because CLECs Generally Have Reasonable Access Rates.

Insofar as CoreComm is aware, there is no "market failure" that requires prescriptive regulatory intervention in the provision of access services by CLECs. CLECs are, for the most part, fledgling enterprises competing in markets dominated by entrenched ILECs and providing access services to large and powerful IXCs. By and large, CLECs charge reasonable access rates, usually less than or equal to those charged by ILECs. Departures from this pattern are usually a product of the distinct cost structures of new entrants, whose market shares are dwarfed by those of the incumbents.

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[3] See, e.g., 47 U.S.C. §§ 251-253.

[4] 47 U.S.C. § 160. As competition has been developing, the Commission has been gradually deregulating activities that previously were regulated. For example, the Commission has eased price cap regulation for incumbent local exchange carriers in this very proceeding. See Notice at ¶¶ 19-30.

[5] 47 U.S.C. § 160.

[6] Notice at ¶ 33.

What rate is the "right" rate for access services depends on a number of circumstances, as the Commission recognizes. The circumstances of the members of the National Exchange Carriers Association are different from those of the large price cap ILECs, and their access charges are quite different as well.[7] The circumstances of CLECs are different too, and they will need to be given flexibility to explore the use of different technologies and different pricing plans. Considering the differing cost structures of CLECs and ILECs -- which may result in the need to charge different rates -- the Commission should not adopt a rule requiring that CLEC access charges be equal to or less than ILEC access charges.

CoreComm understands that some IXCs have presented allegations of excessive access charges on the part of a small number of CLECs. The Commission has noted that these allegations are disputed and that the evidence is subject to conflicting interpretations.[8] Even if these allegations are true, however, they do not amount to a showing of a pervasive problem warranting sweeping new regulation for all market participants. If excessive access charges are imposed in a few limited circumstances by a few CLECs, this is a situation that can be better handled with a scalpel than a meathammer.

The Commission's treatment of nondominant IXCs provides a useful model for the CLEC access charge issue. The Commission does not regulate the rates charged by nondominant IXCs, even though occasional issues arise about the appropriateness of certain IXC

[7] See generally 47 C.F.R. § 69.1 et seq.
[8] Notice at ¶ 187.

rates. The Commission has eliminated blanket rules that govern the entire industry,[9] and instead deals with complaints as they arise, on a case-by-case basis.[10]

The Commission should do the same with respect to CLEC access charges, addressing them individually under Section 208. Regulating all access charges to deal with outlying CLECs that may charge excessive rates would not be "the least intrusive means" available, as contemplated by the Notice.[11] The complaint process of Section 208 is considerably less intrusive to the access market than blanket regulation because it allows the market to dictate appropriate charges while rectifying the few cases in which market forces may not have prevailed.[12]

Significantly, no party has presented evidence of market failure. To the contrary, as the Commission found in its Access Charge Reform First Report and Order, the rates of ILECs and other potential competitors constrain the access rates that can be charged by CLECs because CLECs are not likely to risk damaging their developing relationships with IXCs by charging unreasonable access rates.[13] Indeed, any excesses in access charges would strengthen the incentives of the IXCs to enter the local market to capture exchange and exchange access

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[9] See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Second Report and Order, 91 FCC 2d 59 (1982) (certain nondominant carriers should be treated by forbearance because Section 208 complaint process and market forces ensure just and reasonable rates).

[10] See, e.g., Halprin, Temple, et al. v. MCI Telecommunications, Memorandum Opinion and Order, 13 FCC Rcd 22568, ¶ 7 (1998) (case-by-case Section 208 procedures used to remedy unjust and unreasonable tariff practices).

[11] See Notice at ¶ 33.

[12] Section 208 allows any person to file a petition with the Commission, complaining about an act done or not done by a common carrier, in contravention of any provision of law. If the common carrier does not satisfy the complaint, the Commission will investigate the petition and issue an order that is appealable. See 47 U.S.C. § 208.

[13] 12 FCC Rcd 15982, ¶ 361 (1997).

revenues themselves.[14] IXC provision of local exchange services diminishes their dependence on both ILECs and CLEC. Because both CLECs and IXCs have generally made business customers their primary targets in the local market, IXCs are in fact already competing with CLECs in the provision of access services. Any justification for regulation of CLEC access charges will decline further as IXCs increasingly penetrate the local market.

II. IMPOSITION OF ACCESS CHARGE REGULATION ON CLECS WOULD HURT COMPETITION.

The 1996 Act gives the Commission important new regulatory powers to break open previously closed markets, but as a general proposition the statute has a decidedly deregulatory bent.[15] The goal should be to create the competition needed to justify more deregulation, not to craft a new regulatory scheme to govern the business decisions of new entrants.

The Commission's market-based approach towards CLECs over the past few years has resulted in increased competition in the telecommunications industry, giving consumers many more choices than they previously enjoyed. Needless to say, however, competition has not yet reached its full potential. It will do so only if the Commission avoids unnecessary intrusion into the affairs of new entrants and focuses its energies primarily on completing the competition-enhancing, market-opening measures that remain.

To refrain from establishing a new regulatory regime for CLEC access charges is not to sanction unreasonable behavior. Sections 201 and 202 of the Communications Act require telecommunications providers to establish "just and reasonable" charges and practices. The Commission's continuing power to enforce these sections -- buttressed by the Commission's

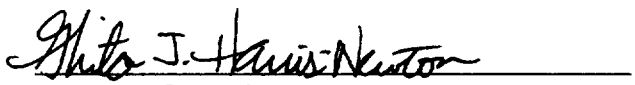
[14] The Commission has recognized this market force. Access Charge Reform, First Report and Order, 12 FCC Rcd, 15982 at ¶ 362.
[15] See footnote 2 and accompanying text.

determination to exercise its enforcement powers when necessary[16] -- is all that is needed to ensure fair, just, and reasonable CLEC access charges while promoting competition.

CONCLUSION

The telecommunications industry is a dynamic marketplace where CLECs are finding their own way and bringing more choices to consumers. New entrants are experimenting with innovative strategies and technologies, and neither business plans nor cost structures are uniform. CLECs have no pervasive market power and imposing regulation on their access charges now may hurt the development of competition. All CLECs should not be forced into access charge regulation because of the possible abuses on the part of a few companies. Bad actors, if any, should be dealt with separately, on a case-by-case approach under Section 208.

Respectfully submitted,



Christopher A. Holt
Assistant General Counsel
Regulatory and Corporate Affairs
CoreComm Limited
110 East 59th Street, 26th Floor
New York, NY 10022
212/906-8488

James L. Casserly
Ghita J. Harris-Newton*
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue N.W., Suite 900
Washington, D.C. 20004
202/434-7300

Its Attorneys

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[16] The Commission's commitment to enforcement is heralded in many statements and speeches of Commissioners and staff. The recent establishment of the Enforcement Bureau is further evidence of the Commission's intention to put those statements into practice.

*Admitted in Virginia only.